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International Covenant on Civil and Political Rights

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Human Rights Committee

Concluding observations on the third periodic report of Bulgaria

Addendum

Information received from Bulgaria on follow-up to the concluding observations*

[4 February 2013]

1. The Bulgarian authorities carefully studied the concluding observations of the Committee on Human Rights regarding the third periodic report submitted by Bulgaria (CCPR/C/BGR/CO/3) and in response to the Committee's recommendations, as contained in paragraphs 8, 11 and 21 of the concluding observations, would like to provide to the Committee the requested follow-up information:

Committee's recommendations made in paragraph 8

> *The State party should take the necessary measures to eradicate all forms of harassment by the police and ill-treatment during police investigations, including prompt investigations, the prosecution of perpetrators and the adoption of provisions for effective protection and remedies to the victims. The requisite level of independence of the judicial investigations involving law enforcement officials should be guaranteed. The State party should ensure the creation and implementation of an independent oversight mechanism on prosecution and convictions in the cases of complaints against criminal conduct by members of the police.*

Information regarding the implementation of the Committee's recommendations made in paragraph 8

2. The judicial investigations of complaints against law enforcement officials provide for impartiality and reliability. They are conducted by authorities which are completely independent from the police – the Commission for Protection against Discrimination or the

* The present document is being issued without formal editing.

investigation and prosecution authorities in the cases when the act constitutes a crime of general nature.

3. In order to ensure a permanent mechanism for monitoring and supervision of the activities of the police in their daily work with citizens, the Ministry of Interior (MoI) has established a Permanent Commission on Human Rights and Police Ethics (PCHRPE). The Commission implements joint projects with the Ombudsman, the Commission for Protection against Discrimination, the National Council for Cooperation on Ethnic and Integration Issues (NCCEII) and non-governmental organizations (NGOs) and relevant media. These projects are aimed at consolidating positive police practices and harmonizing the standards of police conduct with the requirements arising from the membership of Bulgaria in the European Union. The PCHRPE has regional branches. All activities of the Commission are organized in accordance with workplans, updated annually.

4. The annual plan covers a wide range of topics, such as:

- Monitoring of the compliance with the rights of persons detained in the branches of the Ministry of Interior;
- Consideration of signals alleging violation of human rights and freedoms of citizens by officials of the Ministry of Interior;
- The elaboration of legislative changes concerning the use of firearms by police officers in order to ensure full compliance with the standards of the United Nations human rights treaties and other international human rights instruments, such as the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) and other relevant documents of the Council of Europe;
- Provision of thematic training in the field of human rights protection to police officers, etc.

5. Necessary practical measures are also being taken by the Ministry of the Interior in order to address the root causes of violations of the Law by the Police, in particular police brutality, and prevent their recurrence in the future. For instance, a special registration system for complaints of alleged ill treatment by police officers has been introduced and is closely monitored.

6. There is also a special "Inspection" Directorate within the administrative structure of the Ministry of Interior. It has competencies to investigate and proceed with complaints against any Ministry employee or police officer for alleged violations of the Law. The "Inspection" Directorate provides also methodical assistance to the Ministry of Interior structures in their efforts to expose and counteract corruption, conflict of interest and breaches of the Code of Ethics of police officers. Its independence from other structures of the Ministry is statutorily guaranteed. The Directorate is subordinated directly to the Minister of Interior.

7. In accordance with the Rules for the Implementation of the law for the Ministry of Interior (RILMI), the "Human Resources" Directorate of the Ministry analyses and controls the state of discipline and disciplinary practices in the Ministry structures and provides methodological guidance and supervision of the disciplinary proceedings in cases of disciplinary offences, e.g. police brutality.

8. When there are complaints lodged against unauthorized behaviour by police officials, the information is checked and after that the relevant measures are taken. For the cases in which it is established that the acts committed by the officials constitute a crime of general nature the files are sent to the competent Prosecutor's Office to open pretrial proceedings.

9. The collection, recording, reporting, monitoring, analysis, storage and use of information about the state of discipline and disciplinary practices in the Ministry of Interior are being carried out in compliance with Instruction No. Iz-2813 of 4 November 2011 on discipline and disciplinary practices in the Ministry of Interior (*State Gazette* No. 91 of 18 November 2011).

10. By Order of the Minister of Interior, the Code of Ethics for civil servants at the Ministry of Interior has been amended in December 2011. The Code of Ethics prescribes ethical standards relating to the conduct and public image of civil servants. The Code also includes rules aimed at preventing human rights violations.

11. Compliance with the Code is regulated by the Ministry of Interior Act, and violations of the rules of conduct of civil servants are considered a disciplinary offence in case of which the appropriate disciplinary action is brought against the offender.

12. The officials of the Ministry of Interior are regularly updated on ethical standards of conduct to ensure respect for human rights in the daily activities of police officers.

13. Should citizens have suffered damage as a result of unlawful actions of State authorities, the Act on the Liability for Damage Incurred by the State and the Municipalities applies. The Act stipulates that persons who have suffered harm caused to them by the authorities of the investigation, prosecution and courts for unlawful arrest or detention, when the detention order was cancelled due to lack of legal basis, can seek compensation in the manner provided in that Act.

14. In these cases, the State owes compensation about all material and immaterial damages which are a direct and immediate consequence of the damage, irrespective of the fact whether they were caused guiltily by the official. The State is entitled to file in a regression claim against the civil servant who has allowed or conducted the act, caused the damages. This, in turn, has deterrent effect to the officers of the Ministry of Interior.

15. The Penal Code (PC) contains a section entitled "Crimes against Justice", wherein article 287 expressly provides for criminal responsibility of "any official who, in the course or on the occasion of discharging his service, acting alone or through another, takes unlawful coercive action in respect of an indicted individual, a witness or an expert witness, in order to extort confession, testimony, a conclusion or information therefrom", and the sanction is deprivation of liberty from three to ten years and withdrawal of the right to occupy a Government or public position and exercise the relevant profession or activity. This regulation is in full compliance with the issue of torture of interrogated persons, as provided for in the International Covenant on Civil and Political Rights (resp. rights under art. 15).

16. According to the latest amendments to the Ombudsman Act (*Official Gazette* No. 29 of 10 April 2012) the Ombudsman will act as the national preventive mechanism under and in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 18 December 2002 (*Official Gazette* No. 52 of 2011), ratified by an Act of Parliament (*Official Gazette* No. 34 of 2011). The powers of the Ombudsman as a national preventive mechanism relate to the protection of persons deprived of liberty from torture and other cruel, inhuman or degrading treatment or punishment. These powers are stipulated in chapter Four "a" of the Ombudsman Act.

17. In connection with the recommendation to adopt regulations on the effective protection and compensation of victims of crime, it should be noted that since 1 January 2007 the Act on Support and Financial Compensation to Victims of Crime has been in force (*Official Gazette* No. 105 of 2006). The adoption of the Act is in response to the European Union recommendations for legislative measures to establish minimum standards for the protection of crime victims. This special Act has transposed into the Bulgarian legislation

the provisions of the Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings and Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims. The purpose of this Act of Law is to recognize and ensure the protection of rights and legitimate interests of crime victims.

18. Training on human rights at the Police Academy covers the legal issues regulated by the International Covenant on Civil and Political Rights. The content of that international instrument and the mechanisms for monitoring its compliance are part of the curricula.

19. In March 2012, the Police Academy started a new refresher course on "Police Practices and Human Rights" designed to update training. The course covers the following legal amendments related to the recently introduced "absolute necessity" criterion in the use of firearms, equipment and physical force. One of the highlights of the course is the protection of civil and political rights according to international standards, national laws and best practices. Special emphasis is given to the prohibition of torture, cruel or degrading treatment or punishment. The course is included in the Catalogue of Professional Training of the Ministry of Interior Officers.

20. The issues related to the use of force by law enforcement officers in the context of protecting civil and political rights, and in particular the prohibition of torture, cruel or degrading treatment or punishment, are taught in four chapters in part "Police Protection of Human Rights" of the basic professional training. Between January and November 2012, 159 officers of the Ministry of Interior received training in these topics.

21. In the first semester of the academic year 2012/2013 training in the course entitled "Human Rights Protection" is provided to 100 cadets from the first year of full-time Bachelor's Programme (undergraduates) of the Police Academy who specialize in "Combating Crime and Protection of Public Order." The topics covered include an introduction to the International Covenant on Civil and Political Rights. Training has begun in October 2012. The examination for this discipline will be held in February 2013.

22. The content of the courses relevant to the protection of human rights is regularly updated, including in connection with the monitoring mechanisms of international organizations on Ministry of Interior compliance with the human rights protection.

23. In March 2012, the Police Academy conducted a training course on "Combating Hate Crimes" in implementation of the Memorandum of Cooperation between the Ministry of Interior and the Organization for Security and Cooperation in Europe (OSCE). Forty-six officers received training; these included investigating police officers, staff working with crime victims, and teachers at the Police Academy. The training was also attended by representatives of the Prosecutor's Office and the Commission for Protection against Discrimination.

24. Training plans for in-service staff training also include topics related to the Methodological Guidelines for the use of various means of restraint, technical characteristics and safety rules pertaining to their use and storage by police officers and issues relating to human rights and police ethics adopted in June 2011.

25. Steps have been taken to ensure the training of police officers on issues related to minority communities as part of training activities during the academic year.

26. In 2006, a Memorandum of Understanding on Police Cooperation was signed between the Ministry of Interior and the Kingdom of the Netherlands. Between 2008 and 2010, activities were implemented under the police cooperation programme approved by the Minister of Interior which focused on the "Community Policing" model. A training multimedia programme was developed entitled "Tackling Local Security Issues in Partnership", and a training course for police officers was conducted in December 2011.

Personnel training and the post-implementation analysis of the training programme will be completed in January 2013.

27. "Civil Monitoring of the Police" is another project which started in 2004 and has been implemented in stages. It was implemented by the Open Society Institute Sofia under a methodology approved by the Ministry of Interior's Security Police Chief Directorate and was aimed to build trust between the police and the local community and ensure the transparency of police work. In essence, the civil monitoring meant that citizens can visit places of detention at police stations without prior notice.

28. After the project was completed in late 2011, Open Society Institute prepared a report. Its recommendations have been considered by the Ministry of Interior and the Standing Committee on Human Rights and Police Ethics (SCHRPE).

29. In preparing the training of police officers, the Ministry partnered with NGOs which held a number of training seminars on this issue. Among these NGOs were the Bulgarian Gender Research Foundation, the Diva Foundation for Care in the Community, Plovdiv, the Demetra Association of Bourgas, Nadia Centre, Open Society Institute, Bulgarian Lawyers for Human Rights Foundation, the Bulgarian Helsinki Committee and others.

30. In the period 19 to 21 December 2011, a training seminar was held for members of the SCHRPE on "Recent decisions of the European Court of Human Rights in the context of police ethics". The workshop involved lecturers from the Open Society Institute and Bulgarian Lawyers for Human Rights Foundation.

Committee's recommendations made in paragraph 11

The State party should ensure, as a matter of urgency, the conformity of its legislation and regulations with the exigencies of the right to life, in particular as reflected in the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

Information regarding the implementation of the Committee's recommendations made in paragraph 11

31. The exercise of police powers involves the legitimate ability to restrict certain rights of citizens in the public interest. The use of force, means of restraint and firearms are exhaustively regulated by law.

32. The national legislation ensures that citizens' rights are respected. The main relevant acts include:

- The Constitution of the Republic of Bulgaria;
- The Penal Code (PC);
- The Criminal Procedure Code (CPC);
- The Ministry of Interior Act (MIA);
- The MIA Implementing Regulations (MIAIR);
- The Code of Ethics for civil servants in the Ministry of Interior, approved by Minister's Order No. Iз-2013 of 8 November 2006;
- Instruction No. Iз-2813 of 4 November 2011 on discipline and disciplinary practice at MoI;
- Instruction No. Iз-1711/15.09.2009 on the equipment of the premises used to accommodate detainees at Ministry of Interior units and internal order rules pertaining thereto.

33. Police officers whose functional duties involve actions which may affect citizens' rights or freedoms undergo mandatory training; their qualifications are updated through on-the-job training courses.

34. In order to monitor compliance with the rights of detainees in interrogation rooms meeting the requirements of Instruction I3-1711/15.09.2009 on the equipment of premises used to accommodate detainees at Ministry of Interior units (*Official Gazette* No. 78 of 2009, amended *Official Gazette* No. 40 of 2010, amended *Official Gazette* No. 33 of 2012) video surveillance cameras have been installed.

35. The Ministry of Interior initiated and held a public discussion on the need to amend the Ministry of Interior Act regarding the use of firearms by police authorities, to bring its provisions in line with the European Convention on Human Rights and other international treaties to which Bulgaria is a party. The discussion involved members of the judiciary and NGOs, including the Bulgarian Helsinki Committee and the Open Society Institute Sofia.

36. As a result, the Ministry set up a Working Group to draft proposals for amendments to the Ministry of Interior Act. The draft provisions have been published on the Ministry of Interior website for public discussion.

37. The Draft Act on Amendments to the Ministry of Interior Act was developed by experts from the Ministry of Interior, the Prosecutor's Office, the Ombudsman and NGOs. It takes into account the need to achieve two major results: on one hand, to ensure that police authorities will be able to exercise their powers in a timely and active manner to guarantee effective response to specific criminal acts, and on the other – that the exercise of such powers will take into account the existence of the standards set out in widely recognized international instruments which provide for thresholds in the use of weapons and force.

38. The Act on Amendments to the Ministry of Interior Act was adopted and has been in force since 1 July 2012. An important point is that the "absolute necessity" standard has been introduced for the use of weapons, physical force and means of restraint by police authorities, thus completing the legal framework ensuring that the rights of citizens are respected.

39. When resorting to physical force and means of restraint, police authorities only apply the force which is absolutely necessary, taking all measures to protect the life and health of persons against whom such force is applied. The use of physical force and means of restraint is to be discontinued immediately after achieving its legitimate purpose. The use of physical force and means of restraint in relation to persons who are visibly minors and to pregnant women is prohibited; the prohibition does not apply to riot control measures where all other means have been exhausted. The use of life-threatening force to arrest or prevent the escape of a person who is committing or has committed a violent offence is prohibited where such person does not endanger the life and health of others.

40. The use of firearms by police officers is permitted only when absolutely necessary:

- In case of an armed attack or threat by firearms;
- For the liberation of hostages and abducted persons;
- Following a warning – to detain a person who is committing or has committed a criminal offence of general nature if such person offers resistance or tries to escape;
- Following a warning – to prevent the escape of a person who was legally detained for a criminal offence of general nature.

41. When using firearms, police officers are obliged, to the highest extent possible, to preserve the life of the person against whom the use of firearms is directed and not to endanger the lives and health of others.

42. Police officers may use firearms without warning while carrying out border surveillance:

- In case of an armed attack against them;
- Against persons who offered armed resistance.

43. Police officers shall discontinue the use of firearms immediately after achieving its legitimate purpose.

44. The use of firearms to arrest or prevent the escape of a person who is committing or has committed a violent offence is prohibited where such person does not endanger the life and health of others.

45. Following the use of weapons the police officers shall produce reports.

46. In the planning and control of the use of physical force and firearms by police organs, measures shall be included to achieve the legitimate purpose with minimum risk to the life and health of citizens.

Committee's recommendations made in paragraph 21

The State party should make sure that the principle of independence of the judiciary is fully respected and understood, and should develop awareness-raising activities on the key values of an independent judiciary aimed at the judicial authorities, law enforcement officials and for the population at large.

Information regarding the implementation of the Committee's recommendations made in paragraph 21

47. The principle of the independence of the judiciary is firmly enshrined in the Constitution of the Republic of Bulgaria and in the Judiciary System Act.

48. The Constitution stipulates that: "The Republic of Bulgaria shall be a State governed by the rule of law. It shall be governed by the Constitution and the laws of the country" (art. 4 (1)).

49. In accordance with article 5 (1), "The Constitution shall be the supreme law, and no other law shall contravene it"; (2) "The provisions of the Constitution shall apply directly".

50. In accordance with article 8, "The power of the State shall be divided between legislative, executive and judicial branches".

51. Article 117 guarantees that (1) "The judiciary shall protect the rights and legitimate interests of all citizens, legal entities and the State"; (2) "The judiciary shall be independent. In the performance of their functions, all judges, court assessors, prosecutors and investigating magistrates shall be subservient only to the law"; (3) "The judiciary shall have an independent budget".

52. Article 119 (1) "Justice shall be administered by the Supreme Court of Cassation, the Supreme Administrative Court, courts of appeal, regional courts, courts-martial and district courts"; (2) "Specialized courts may be set up by virtue of law"; (3) "There shall be no extraordinary courts".

53. Article 121 (1) "The courts shall ensure equality and equal opportunities for all the parties in the judicial trail to present their case"; (2) "Judicial proceedings shall ensure the

establishment of truth"; (3) "All courts shall conduct their hearings in public, unless provided otherwise by law"; (4) "All court rulings shall be motivated".

54. Also, article 20 of the Criminal Procedure Code provides that: "Court hearings shall be public, except as provided in this Code".

55. Another guarantee for the independence of the judiciary is the manner of constitution of the Supreme Judicial Council (SJC). Three of its members are automatically assigned: the Chief Prosecutor, the President of the Supreme Court of Cassation and the President of Supreme Administrative Court. The remaining members are divided into two quotas, each having 11 members. The first quota is elected by the general assembly of judges, prosecutors and investigators, and other quota is elected by the National Assembly. These members serve for a five-year term; they may not be re-elected for a further term of office.

56. The election of SJC members is public. The general meetings of magistrates for the last election could be observed through the SJC website, and the election of members from the parliamentary quota was broadcast live on national radio and TV. SJC meetings are open to the media.